



800 Boylston Street Boston, Massachusetts 02199

**JOHN COPE-FLANAGAN**  
NSTAR Electric & Gas Corporation  
Assistant General Counsel  
Direct Dial: (617) 424-2103  
Telecopier: (617) 424-2733  
John\_Cope-Flanagan@nstaronline.com

August 17, 2001

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

**Re: D.T.E. 01-54 (Phase I) – Reply Comments of NSTAR Electric**

Dear Secretary Cottrell:

This Reply Letter is filed on behalf to Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric ("NSTAR Electric" or the "Company"), to respond to the Initial Comments filed by other commenters in the above-referenced proceeding. Because most of the relevant issues contained in initial comments were discussed at some length during the technical session, NSTAR Electric's initial comments were able to address most of the issues in its first set of comments. Accordingly, the Company will not repeat its initial comments and these reply comments will be limited.<sup>1</sup>

It should be noted that there is little disagreement among the commenters that access to information about customers would be helpful to competitive suppliers, but that information beyond names and addresses should be accorded some degree of confidentiality. The real issue before the Department is the manner in which customer authorization can be obtained for the release of confidential information.

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<sup>1</sup> Silence as to any matter raised in a commenter's initial comments should not be construed as acquiescence to any specific position taken. As in its initial comments, NSTAR Electric takes no legal position with regard to the preemptive effect of the so-called E-Sign Act.

The Division of Energy Resources ("DOER") and the Competitive Suppliers assert that the method of authorization for the release to suppliers of confidential customer information should vary depending on the sensitivity of the information. For example, they indicate that monthly usage data, load-profile categories, budget bill indicator, etc. for all customers should be made available to suppliers unless the customer "opts out" by affirmatively indicating the desire to block the release of the data (Competitive Suppliers Initial Comments at 7-8; DOER Initial Comments at 4-6, 10-11). They also state that customers perceive interval load data to be more sensitive and, therefore, it should not be released without the express authorization of the customer, i.e., an "opt-in" approach (Competitive Suppliers Initial Comments at 9-11; DOER Initial Comments at 11). Both of these commenters indicate that customer credit information is either unnecessary to be released at this time (Competitive Suppliers Initial Comments at 7), or should be released after direct negotiations between the supplier and the customer (DOER Initial Comments at 11, n.15).

Although there seems to be some acknowledgement of the confidential nature of customer information, the suggestion that much of the information can be released on an "opt-out" basis is both inappropriate and unworkable. As indicated in NSTAR Electric's Initial Comments, state law, Department regulations and customer expectations all recognize that utility customer information has and should be treated as confidential and proprietary to the customer, and consequently, customers must affirmatively authorize the release of their private information to marketers (NSTAR Electric Initial Comments at 4-11; see also, Comments of Massachusetts Union of Public Housing Tenants and National Consumer Law Center Initial Comments at 8-10; Attorney General Initial Comments at 6; Western Massachusetts Electric Company Initial Comments at 7-14; Massachusetts Electric Company/Nantucket Electric Company Initial Comments at 2-3).

Moreover, the notion of having a two-tiered process for customers to block the dissemination of their information is completely unworkable. Apparently, the Competitive Suppliers and DOER would have an opt-out process for the release of all confidential customer information, except for interval data. Presumably, customers would need to be notified that certain of their confidential information would be released to suppliers unless they affirmatively indicated to the distribution company that they did not authorize such release.<sup>2</sup> The distribution company would need to establish a mechanism to inform customers of the opt-out option, establish procedures to disseminate and collect opt-out cards, track customer responses and take appropriate actions to ensure that the designated

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<sup>2</sup> NSTAR Electric explained in some detail in its initial comments why an opt-out system for any confidential customer information is both contrary to the overall framework of the Restructuring Act and is an ineffective customer-authorization process that will cause confusion and negative customer reactions (NSTAR Initial Comments at 8-11).

information was not released to suppliers. Then, under the two-tiered system, customers would be told that interval data will be released if they "opt-in" by affirmatively indicating that they wish such information to be released to suppliers. Distribution companies would be required to inform customers of this second option, collect authorizations and implement systems that permit supplier access to interval data for customers who have opted in.

Establishing the systems to handle these options (in addition to another possible opt-out system that would permit customers to remove their name from the existing list of customer names, addresses and rate class) would be extremely expensive and tax the systems of the distribution companies. More importantly, however, it would be impossible to develop a customer-education program that would avoid widespread customer confusion and dissatisfaction. Asking customers to determine whether to "opt-in" for the release of some information and "opt-out" for the release of other information will be correctly perceived by them as an absurdly complicated and nonsensical process.

The Department is justifiably concerned about impediments to the development of a competitive electricity market and all parties, including NSTAR Electric, desire to take reasonable steps to eliminate those impediments. However, that concern must be tempered with the recognition of the privacy rights and expectations of customers. The best course to meet both legitimate considerations is to establish a policy to facilitate voluntary customer authorization for the release of information. A customer-education program coupled with opt-in protocols tailored for the systems and size of individual distribution companies will ensure the maximum, efficient dissemination of information, consistent with informed choices and desires of customers.

The Company believes that the Department should build on the success of the EBT working group by convening a similar working group to establish supplier-compatible protocols for each distribution company. In this way, the input of all market participants can be effectively collected in an informal process. The participants will be able to develop effective customer authorization/opt-in procedures that will facilitate the flow of information from every customer that so desires. NSTAR Electric believes that an effective program can be developed that will remove whatever competitive impediment that currently exists regarding access to confidential customer information.

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NSTAR Electric appreciates this opportunity to offer these reply comments.

Sincerely,

John Cope-Flanagan

cc: Jeanne Voveris, Hearing Officer  
Service List (by electronic mail)